

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN JOSEPH DONAHUE, IV,

Defendants.

Case No. 3:14-cr-00024-MMD-WGC

ORDER

Petitioner John Joseph Donahue seeks to essentially reduce his sentence based on the application of *Johnson v. United States*, 135 S.Ct. 2551 (2015), in which the Supreme Court invalidated the residual clause in the Armed Career Criminal Act of 1984 (ACC”), finding the clause to be unconstitutional vague. Donahue was sentenced on June 8, 2015 (ECF No. 56), a few weeks before the *Johnson* decision. Donahue argues, among other issues, that *Johnson* has retroactive application, but the government disagrees. The Supreme Court is expected to resolve the question of whether *Johnson* has retroactive application by the end of the current Supreme Court term in about four months. See *Beckles v. United States*, No. 15-8544, ___ U.S. ___, 2016 WL 1029080 (June 27, 2016).

Before the Court is the government’s motion to stay the briefing schedule on Donahue’s motion to vacate pending the Supreme Court’s decision in *Beckles*. (ECF No. 62.) The government argues that the Supreme Court’s ruling in *Beckles* may dispose of any opposition that the government has to Donohue’s motion, a decision by this Court in the meantime would necessitate an appeal to preserve the parties’ rights, and a stay of about four months will not be prejudicial to Donohue because even if this Court grants his

1 relief to be re-sentenced, he will nevertheless be in custody until early 2018. (ECF No.
2 62 at 3-5.) Donohue opposes the government's motion to stay, raising several concerns
3 including his right to a timely resolution of his motion to vacate. (ECF No. 63.)

4 The Court agrees with the government. Donohue is entitled to a timely disposition
5 of his motion. However, under the circumstances presented here, where the stay is brief
6 and would not prejudice Donohue, the government's primary opposition to his motion may
7 be resolved by the Supreme Court which will avoid unnecessary work by the parties and
8 the Court, the Court finds that a stay of the briefing schedule is appropriate.

9 It is therefore ordered that the government's motion to stay briefing schedule (ECF
10 No. 62) is granted.

11 DATED THIS 3rd day of February 2017.
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15 MIRANDA M. DU
16 UNITED STATES DISTRICT JUDGE
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